

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1178 of 1995

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

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SB SHEIKH

Versus

STATE OF GUJARAT & 1

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Appearance:

MR MTM HAKIM for Petitioner

MR DA BAMBHANIA for Respondent No. 1

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 11/09/96

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ORAL JUDGEMENT

1. Heard learned advocates for the parties. Rule. Learned Additional Government Pleader Mr. Bambhania waives service of rule on behalf of respondents. Pursuant to the order made by the Division Bench of this Court on 8th November, 1993, petitioner was placed at Serial No. 57A on the seniority list of clerks eligible

for promotion to the post of Deputy Mamlatdar.

2. Under order dated 18th March, 1993, petitioner was placed at Serial No. 57A of the seniority list. The said order has been modified under Order dated 30th September, 1994 and the petitioner's position in the above referred seniority list has been shifted from Serial No. 57A to Serial No. 196A. Learned Advocate Mr. Hakim appearing for the petitioner challenges the above order dated 30th September, 1994 and contends that the said order has been made without affording an opportunity of hearing to the petitioner. He further contends that while considering the petitioner's seniority, the fact of petitioner's having passed the sub-service departmental examination at 15th attempt has been taken into consideration. He has submitted that in view of the judgment of this Court in the matter of Safimiya G. Malek 1992 (1) GLR 704, the relevant factor for determination of seniority is passing of Lower Revenue Qualifying Examination. Thus, according to this ratio, the seniority of the petitioner under dated 30th September, 1994 has been fixed on wrong interpretation of judgment delivered by this Court. Be that as it may, petitioner's seniority was fixed at Serial No. 57A. In view of the order made by this Court, it could not have been altered to the detriment of the petitioner without affording an opportunity of hearing. In view of the above discussion, the impugned order dated 30th September, 1994 - Annexure 'F' to the petition is quashed and set aside. It is clarified that in the event the petitioner's seniority is required to be re-determined, the said exercise shall be taken only after affording an opportunity of hearing to the petitioner. Petition is allowed to the aforesaid extent. Rule is made absolute accordingly. There shall be no order as to costs.

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